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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,518	07/02/2003	John E. Lertzman	50578/C995	3534
23363 7590 12/14/2009 CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068				
EXAMINER				
GOLDMAN, MICHAEL H				
ART UNIT		PAPER NUMBER		
3688				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/612,518

Applicant(s)

LERTZMAN ET AL.

Examiner

MICHAEL GOLDMAN

Art Unit

3688

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21, 38 and 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21, 38 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This communication is a Final Office Action in response to the amendment filed August 10, 2009. Claims 1-3 and 38 have been amended. Claims 22-37, and 39-47 have been withdrawn. Claim 48 has been added. Therefore, Claims 1-21, 38 and 48 are pending and are herein being addressed.

Claim Rejections - 35 USC § 101

2. The rejection under 35 USC § 101 has been withdrawn based on the amendment submitted August 10, 2009.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-21, 38 and 48 are rejected under 35 U.S.C. 102(a) as being anticipated by Burke, US20030083930.

Claim 1 and 38: Burke discloses a method and a *system* for collaborative affinity marketing including a processor, an aggregator, a participant and a merchant comprising:

receiving by a collaborative affinity marketing system enrollment information from the plurality of aggregators, participant and merchant (see page 1, Para [0005] whereby an embodiment of the invention (collaborative affinity marketing system) involves a clearinghouse component (processor), a nonprofit component (aggregators), supporter component (participants) and a merchant component, also see page 4, Para [0016] whereby receiving via a central computer system enrollment information from (a plurality of) nonprofits, supporters and merchants accounts;

assigning a participant identification code to the participant wherein the participant identification code keeps identity of the participant anonymous (see page 2, [0020], lines 2-4 whereby the supporter (participant) is assigned an account number ID (identification code) via the CC, also see page 4 [0067] whereby system provides security for all participants, also see Para [0070], whereby a supporter can automatically send a rebate to a nonprofit when they make purchases by *simply entering a system ID*, i.e. 'amount spent, location, time, date etc', (no requirement for personal information for rebate, hence anonymous via simply entering a system ID);

storing enrollment information of the plurality of aggregators, participant, and merchant, wherein no merchant is yet selected by the participant (see Figure 1, Central Computer and Data Storage; also see page 1, [0016] whereby a central computer system enrolls nonprofits, supporters and merchant accounts and process as well as

update accounts, examiner interprets *update accounts* as the CC initially storing enrollment information wherein no merchant is yet selected by the participant, hence when merchants or additional merchants are selected by the participant, the CC updates these accounts);

selecting by the participant a selected aggregator from the plurality of aggregators (see page 4, [0064], lines 1-3 whereby the (affinity) system allows all consumers to participate in earning rebates for (selecting) their favorite nonprofits);

providing the participant identification code to the merchant, when the participant initiates a purchase transaction with the merchant (see page 4, Para [0070], whereby a supporter can automatically send a rebate to a nonprofit when they make purchases by *simply entering a system ID*);

storing *information about the* participant identification code and an amount for the purchase transaction by the merchant (see claim 1, lines 11-12 'having the entry terminal (merchant) record (store) the ID, as well as the amount of dollars spent in a transaction);

receiving the stored participant identification code, the amount for the purchase transaction, and (computes/collects) funds corresponding to a portion of the amount for the purchase transaction by the *processor* (see page 4, [0070], also see page 1, [0015] whereby in Fig 1, a system embodying a central computer system having a clearinghouse (processor) component, also see page 1, [0005] whereby the processor is a central component of the system connecting the other three components, hence the

processor is always integral to every transaction thereby the processor inherently collect/computes a portion of each transaction); and

sending a portion of the funds received by the processor to the selected aggregator (see page 4, [0070], also see page 4, [0067], line 3 dispersing donations).

Claim 2: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the participant enrolls with the processor (see page 1, Para [0016], lines 1-3).

Claim 3: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the participant enrolls with the selected aggregator (see page 2, [0035]).

Claim 4: Burke discloses the invention as in claim 3 above, and further discloses the feature further comprising sending the participant identification code to the processor without disclosing the identity of the participant (see page 2, [0035] whereby the nonprofit provides participant with a TC (transaction card) , also see page 2, [0020], lines 8-9 whereby via participant TC at cash register(s) participant connect their ID and amount of their spending (using same method for transferring ID to processor as if they had enrolled via the processor, see page 2, Para [0021], also see page 4 [0067] whereby system provides security for all participants, also see Para [0070], whereby a supporter can automatically send a rebate to a nonprofit when they make purchases by

simply entering a system ID, i.e. 'amount spent, location, time, date etc', (no requirement for personal information for rebate, hence anonymous via simply entering a system ID);).

Claim 5: Burke discloses the invention as in claim 1 above and further discloses the feature wherein the providing the participant identification code to the merchant comprises of presenting a participant card to the merchant (see page 4, Para [0070], line 4).

Claim 6: Burke discloses the invention as in claim 5, above and further discloses the feature wherein the participant card is one or more of a group of a bar coded card, a card with magnetic strip, a smart card and a radio frequency identification card (see Fig 2, Mag Stripe and Bar Code).

Claim 7: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the sending a portion of the funds received by the processor from the merchant to the selected aggregator (nonprofit component) comprise of providing a credit to the aggregator (see page 1, Para [0007], lines 5-7).

Claim 8: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the purchase transaction is an on-line transaction and the participant identification code is provided to the merchant electronically (see page 1,

Para [0006], lines 7-9 whereby clerk (merchant) receives user/customer ID via barcode, mag stripe, key stroke or other (electronic) modality, also see Para [0017], lines 1-4 whereby the merchant terminal connects to the system/computer/CPU via communications system via satellites/cables (on-line transaction))

Claim 10: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the participant identification code is stored in a merchant sales tracking system as an item, when the participant initiates a purchase transaction (see page 1, Para [0007], lines 1-4 whereby one embodiment the entry terminal records the ID and the transaction data which is then stored (in merchant sales tracking system) as well as uploaded to the central clearinghouse component).

Claim 11: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the *selected* aggregator is one or more of the group [of] a non-for-profit organization, a marketer organization or a product distributor (see page 4, Para [0069], lines 4-7 whereby the invention offers multiple reward programs (non-profit aggregators).

Claim 12: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the enrollment information of the plurality of aggregators, participant, and merchant are stored in a processor database (see page 1, Para [0016]

lines 1-5 whereby the central computer system (processor database) enrolls nonprofits, supporters and merchant account and processes and updates accounts).

Claim 13: Burke discloses the invention as in claim 12 above, and further discloses the feature wherein the processor database is accessible via a processor website (see page 1, Para [0017], lines 1-12 whereby the CC is a system or computer contains a CPU and a large data storage and a communications systems accessible via the internet (website) or intranet networks in homes and businesses).

Claim 14: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the funds corresponding to a portion of the amount of purchase transaction are sent to the processor via electronic fund transfer (see page 4, Para [0061] whereby the CC computes the rebate and updates all accounts, also see Para [[0067], lines 4 whereby a bank based (electronic fund transfer) method of tracking and dispersing donations (portion of funds from merchant sent to processor, processor inherently collects its portion of each transaction or batch of transactions)).

Claim 15: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the portion of the funds received from the merchant are sent to the selected aggregator via electronic fund transfer (see page 4, Para [0061] whereby the CC computes the rebate and updates all accounts, also see Para [[0067],

lines 4 whereby a bank based (electronic fund transfer) method of tracking and dispersing donations (portion of funds from merchant sent to aggregator)).

Claim 16: Burke discloses the invention as in claim 1 above and further discloses the feature comprising storing historical data for each of the processor, *selected* aggregator, participant and merchant (see page 4, Para [0067], lines 1-7 whereby an automatic and centrally coordinated data tracking system, an audible system (storage) for all participants (processor, aggregator, participant and merchant)).

Claim 17: Burke discloses the invention as in claim 1 above, and further discloses the feature further comprising *validating* the stored participant identification code, the amount of purchase transaction, and the funds corresponding to a portion of the amount of purchase transaction by the processor (see page 2, Para [0023], whereby the participant ID is validated via a secure personal identification number (PIN) and at the time of a store purchase information regarding the purchasing activity (amount of purchase transaction) is connected to the account number to form a data packet which is sent to the CC for processing and accounts management, also see [0061] whereby the CC computes the rebate and updates ALL (inherently includes processor portion accounts).

Claim 18: Burke discloses the invention as in claim 17 above, and further discloses the feature wherein stored transaction data is for statistical and demographic analysis (see page 4, Para [0069], lines 3-9 whereby customer spending and loyalty behavior are recorded (stored) in order to provide sophisticated and robust reporting capability (statistical and demographic analysis)).

Claim 19: Burke discloses the invention as in claim 1 above, and further discloses the feature comprising sending a report generated by the merchant to the processor (see page 2, Para [0022]).

Claim 20: Burke discloses the invention as in claim 1 above, and further discloses the feature comprising sending a report generated by the processor to the *selected* aggregator (see page 4, lines 1-6 whereby the components (nonprofit/aggregator as one of components) accepts and interfaces with multiple and diverse merchants to provide sophisticated reporting capability).

Claim 21: Burke discloses the invention as in claim 1 above and further discloses the feature comprising sending a report generated by the processor for the participant (see page 4, Para [0067] whereby a centrally coordinated data tracking system provides information for all participants).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burke in view of Phillips et al. (7,398,248).

Claim 9: Burke discloses the invention as in Claim 1 above, however he fails to disclose the feature wherein the providing the participant identification code to the merchant comprises of scanning a fingerprint or retina of the participant.

However, Phillips et al. discloses the method of providing the participant identification code to the merchant comprised of scanning a fingerprint or retina of the participant (see column 3, lines 20-24).

Both Burke and Phillips et al. disclose a method of confirming the identity of customers by biometric means in a retail environment with reward and rebate cards.

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the Burke marketing method to include either a retinal scan or a fingerprint scan as taught by Phillips et al. in order to provide the security required to ensure improved automation and facilitation of a collaborative affinity marketing process.

6. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burke in view of Feidelson et al. (6,345,261).

Claim 48: Burke discloses the invention as in Claim 1 above, further comprising receiving transaction data a financial information by the processor from the merchant (see paragraph [0007] lines 1-4) and validating the received financial information (see paragraph [0023] lines 13-15 whereby CC processes entry terminal data transferred to the CC, Examiner interprets processing as the same as is done for commercial merchant credit card batch processing which inherently includes verification and validation of funds received and proper distribution to sub account(s)). However he fails to disclose the feature further comprising storing a contract rebate percentage for each

of the plurality of merchants and validating the received funds against the stored contract rebate percentage for the merchant.

Feidelson discloses the feature wherein the method includes, for a customer loyalty program, negotiating a rebate percentage with [each] merchant(s) ... and receiving rebates from the merchants as a result of the [customer] respective purchases (see abstract lines 1-15, also see column 2, lines 40-57; Examiner interprets 'negotiating rebate percentages with merchants' as implicitly allowing for different percentage rebates for different merchants; also see column 13, lines 51-54 for contract and rebates, also see Fig 4 whereby e-Toys has a 20% rebate and Amazon.com has a 15% rebate) and validating the received funds against the stored contract rebate percentage for the merchant (see column 6, lines 10-20 whereby purchase/rebate database information made at merchant web sites and information regarding rebate monies that are due and have been received from the merchants are stored in the database and implicitly/inherently validated via '...(rebates) have been received from the merchants').

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the invention of Burke to include the feature of negotiating, storing and validating the different rebate percentages (amounts/financial information) from each merchant as taught by Feidelson so as to provide a user-friendly loyalty based customer award program that is attractive to both merchants and customer.

Response to Arguments

7. Applicant's arguments filed August 10, 2009 have been fully considered but they are not persuasive.

Applicant argues with respect to claims 1 and 38 "...Burke does not teach...limitations ...of 'storing the enrollment information of the plurality of aggregators, the participant and the plurality of merchants in a database, wherein no merchant is yet selected by the participant,' 'providing the participant identification code to any of the plurality of merchants, when the participant initiates a purchase transaction with said any of the plurality of merchants, when the participant initiates a purchase transaction with said any of the plurality of merchants,' 'receiving...funds corresponding to a portion of the funds received by the processor to the aggregator.'

Examiner respectfully disagrees for reasons as follows:

-the rejection has been revised above whereby examiner interprets paragraph [0016] which reads '...update accounts...', which implies that when new merchants are selected by participants their ID will be provided to the selected merchant(s), hence enrollment information is stored wherein no merchant is yet selected by the participant. Examiner also notes that this is a preferred embodiment and that other embodiments would include obvious variants/interpretations of the initial enrollment information storage; also see paragraph [006] lines 1-4 whereby according to another embodiment, '...at the time of enrollment...provides each participant an individual ID to be used at the time of store purchase...', examiner interprets this embodiment as enrolling participants whereby no merchant(s) is yet selected at the time of enrollment.

Applicant further argues "...Burk[e] does not teach or suggest...the limitation of 'receiving...funds corresponding to a portion of the amount for the purchase transaction by the processor,' Examiner respectfully disagrees, see paragraph [0023] lines 1-15 and specifically lines 13-15 whereby 'The data packet is stored in the cash register [Point of Sale] or entry terminal until it is batch transferred with other data packets to the CC for processing and accounts management', examiner interprets this batch processing as identical to that of credit card batch processing, whereby (electronic) funds are transferred for processing and Examiner further interprets the processing as 'sending a portion of the funds received by the processor to the aggregator', Examiner once again notes that paragraph [0007] in one of the embodiments whereby the rebate is sent from the merchant at the direction of the CC, Examiner refers once again to the 'batch processing' above for another embodiment which is interpreted as the funds being sent from the CC to the aggregator.

Applicant further argues that '...Burke does not teach or suggest 'verifying the received funds against the received amount for the purchase transaction by the processor'. Rather, Burke's clearinghouse component merely reports all transaction data...', Examiner respectfully disagrees, and refers to paragraph [0023] whereby 'The data packet is stored in the cash register [Point of Sale] or entry terminal until it is batch transferred with other data packets to the CC for **processing** and accounts management', examiner interprets this batch **processing** as identical to that of credit card batch processing, whereby (electronic) funds are transferred for processing and Examiner further interprets the processing as including 'verifying the received funds

against received amount for the purchase transaction by the processor'. This interpretation reflects Examiner experience with a merchant commercial credit card batch processing, typically one batch per day for a small business.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MICHAEL H. GOLDMAN** whose telephone number is (571)270-5101. The examiner can normally be reached on Monday thru Thursday 6:00am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Weinhardt can be reached on 571-272-6633. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mhg
December 9, 2009

/James W Myhre/
Primary Examiner, Art Unit 3688